



FAIRFAX
COUNTY

STAFF REPORT

V I R G I N I A

PROPOSED ZONING ORDINANCE AMENDMENT

Condominium Applicants

PUBLIC HEARING DATES

Planning Commission

September 27, 2006 at 8:15 p.m.

Board of Supervisors

October 23, 2006 at 4:00 p.m.

**PREPARED BY
ZONING ADMINISTRATION DIVISION
DEPARTMENT OF PLANNING AND ZONING
703-324-1314**

July 31, 2006

SPM



Americans With Disabilities Act (ADA): Reasonable accommodation is available upon 7 days advance notice.
For additional information on ADA call 703-324-1334 or TTY 711 (Virginia Relay Center).

STAFF COMMENT

The proposed Zoning Ordinance amendment is on the 2006 Priority 1 Zoning Ordinance Work Program and is in response to House Bill 128 and Senate Bill 430, which were adopted by the 2006 Virginia General Assembly and are identical bills. The adopted legislation revised §§ 15.2-852, 15.2-2289 and 55-79.43 of the *Code of Virginia* to clarify, for condominium developments, who may file special permit, special exception, rezoning, development plan and variance applications, sites plans, and sign proffered conditions. The proposed amendments incorporate these changes into the Zoning Ordinance.

Existing Zoning Ordinance Provisions

The Zoning Ordinance currently contains provisions for the processing of rezoning, special permit, special exception and variance applications and the processing of site plans, including who is allowed to submit such applications. A property owner involved in a special permit, special exception, rezoning or variance application for their property is allowed to submit such applications pursuant to Sections 8-009, 9-009, 18-201 and 18-401 of the Zoning Ordinance, respectively. If a special permit or special exception applicant is not the owner of the property involved in the application, evidence must be submitted that the applicant has the right to use the property as proposed under Sections 8-011 and 9-011 of the Zoning Ordinance. Under Sect. 18-202, a rezoning application filed by an agent, contract purchasers or lessee must include a notarized written statement by the property owner indicating endorsement by the property owner. Under Sect. 18-203 of the Zoning Ordinance, any proffered conditions must be signed by the property owner, even if the property owner is not the applicant. Under Sect. 17-108 of the Zoning Ordinance, all site plans must be submitted by the property owner or an agent of the property owner. In instances where there are multiple property owners, each property owner must agree to the zoning application or site plan and must sign any proffered conditions.

A change in use resulting in an increase in the number of required parking spaces necessitates the submission of a parking tabulation. The intent of a parking tabulation is to ensure that there is adequate overall parking for a development. Although Sect. 17-108 specifies that site plans must be submitted by a property owner or an agent of the property owner and the parking tabulation requirement is part of the site plan provisions, the Zoning Ordinance does not specify who can submit parking tabulations. By interpretation, property owners, landlords and condominium associations must concur with the information contained in a parking tabulation and must sign the parking tabulation form.

In a condominium development, each owner of a condominium unit also has ownership interest in any common areas. Thus, each condominium unit owner must agree to any special exception, special permit, rezoning or variance application or site plan and must sign any proffered conditions impacting the condominium development. As such, it is very difficult, if not impossible, for any condominium development to seek rezoning, special exception, special permit or site plan approval.

Background

Condominium developments in Virginia are subject to the Code of Virginia, Title 55, Chapter 4.1 (Condominium Act). House Bill 128 and Senate Bill 430 revised §§ 15.2-852 and 15.2-2289 and the Condominium Act to clarify who may file a zoning application and site plan and sign proffered conditions involving an entire condominium or the common elements¹ of a condominium, while the declarant¹ has a right to create additional units or to complete the common elements of a condominium as well as once the developer no longer has such rights. In the former instance, it would be the developer and unit owners' association¹, and in the latter case, only the unit owners' association would be the proper party to process zoning applications and site plans and sign proffered conditions. Only when an application affects an individual unit would the proper party to file be the individual unit owner. A copy of House Bill 128 is contained as Attachment A.

The recent legislation did not revise the portion of the Condominium Act that allows the unit owner, including the developer if the developer owns the unit, to apply for building and occupancy permits, and the unit owners' association to apply for building and occupancy permits for the common elements.

As noted above, it is currently very difficult, if not impossible, for any condominium development to seek rezoning, special exception, special permit or site plan approval under the current Zoning Ordinance provisions. Given the recent adoption of House Bill 128 and Senate Bill 430, the Zoning Ordinance provisions concerning who can file zoning applications, site plans, and sign proffered conditions must be revised to be consistent with the *Code of Virginia* requirements.

Proposed Amendments

In order to reflect the recent amendments to the *Code of Virginia*, a new Sect. 2-518 of the Zoning Ordinance is proposed to be added to clarify who may file the different types of zoning applications and site plans and who may sign proffered conditions in condominium developments. Specifically, the proposed revisions provide that:

- During the time period the declarant has a right to create additional units or to complete the common elements, the declarant has the authority to execute, file and process any site plan, parking tabulation, application for special permit, special exception, variance or rezoning, to include a development plan, conceptual development plan, final development plan, generalized development plan or proffered conditions with respect to the common elements or a plan/application affecting more than one unit.

1 Under the Condominium Act, the term “developer” corresponds with “declarant” and common elements are defined as all portions of the condominium other than the units. A unit owners' association is defined under the Condominium Act. In addition, who can sign on behalf of a Condominium Association is also specified under the Condominium Act.

- Once the declarant no longer has the right to create additional units or to complete common elements, the unit owners' association, as defined in the Virginia Condominium Act, has the authority to execute, file and process any site plan, parking tabulation, application for special permit, special exception, variance or rezoning, to include a development plan, conceptual development plan, final development plan, generalized development plan or proffered conditions with respect to the common elements or a plan/application affecting more than one unit.
- A site plan, application for special permit, special exception, variance or rezoning to include a development plan, conceptual development plan, final development plan, generalized development plan or proffered conditions affecting only one unit may be filed by the unit owner.
- For purposes of obtaining Building Permits, Residential Use Permits or Non-Residential Use Permits and sign permits, the unit owner, including the declarant if the declarant is the unit owner, shall apply for permits for the unit, and the unit owners' association must apply for permits for common elements.

As a result of the proposed provisions, the existing procedures that require a condominium association or its designee to concur with the information presented on a parking tabulation have now been codified.

Sect. 2-409 of the Zoning Ordinance currently contains the minimum lot size and yard requirements for condominium conversions. As part of the Zoning Ordinance amendment, staff is proposing that the provisions of Sect. 2-409 remain in effect and be relocated to a new Sect. 2-518. Such relocation would result in all provisions pertaining to condominiums being located in one section of the Zoning Ordinance, and it is believed that having all such provisions in one location should facilitate the use of the Zoning Ordinance.

In addition, cross references to new Sect. 2-518 have been added in the appropriate sections pertaining to the submission of special permit, special exception, rezoning and variance applications and the submission of site plans.

Conclusion

Given that this amendment would make the Zoning Ordinance provisions pertaining to who can file special permit, special exception, rezoning, variance, Building Permit, Non-Residential Use Permit, Residential Use Permit and sign permit applications, submit site plan and parking tabulations and sign proffered conditions in condominium developments consistent with the Code of Virginia and would facilitate the filing such applications, staff recommends approval of the proposed amendment with an effective date of 12:01 a.m. on the day following adoption.

PROPOSED AMENDMENT

This proposed Zoning Ordinance amendment is based on the Zoning Ordinance in effect as of July 31, 2006 and there may be other proposed amendments which may affect some of the numbering, order or text arrangement of the paragraphs or sections set forth in this amendment, which other amendments may be adopted prior to action on this amendment. In such event, any necessary renumbering or editorial revisions caused by the adoption of any Zoning Ordinance amendments by the Board of Supervisors prior to the date of adoption of this amendment will be administratively incorporated by the Clerk in the printed version of this amendment following Board adoption.

Amend Article 2, General Regulations, to read as follows:

- Amend Part 4, Qualifying Lot and Yard Regulations, by relocating Sect. 2-409 in its entirety to a new Sect. 2-518.

~~2-409 Condominiums, Condominium and Cooperative Conversions~~

- 1. ~~Notwithstanding the specific minimum lot size requirements and minimum yard requirements specified for a given zoning district, a single family detached or attached dwelling condominium development may be permitted under the Condominium Laws of Virginia subject to the following provisions:~~
 - A. ~~In single family attached dwelling developments, the minimum lot size and minimum yard requirements of the zoning district in which located shall be met as if lot lines existed.~~
 - B. ~~Single family detached dwelling developments shall be subject to the following requirements:~~
 - (1) ~~The minimum lot size and minimum yard requirements of the zoning district in which located shall be met as if lot lines existed, and all dwelling units shall be subject to the same requirement to have access to a dedicated public street as single family dwelling units located on lots which result from a subdivision of land, except as provided for by the provisions of Part 3 of Article 11 and Chapter 101 of The Code, The Subdivision Ordinance.~~
 - C. ~~The location of any community structure, such as a clubhouse or swimming pool, shall be governed by the minimum yard requirements presented for all other structures in the zoning district in which located.~~

D. ~~Accessory structures shall be permitted in general accordance with the provisions of Part 1 of Article 10, as determined by the Zoning Administrator.~~

E. ~~Such developments shall comply with the maximum density and other provisions of the zoning district in which located.~~

2. ~~Any existing structure(s) and its related lot may be converted to a condominium or cooperative, provided the development conforms to the applicable Zoning Ordinance provisions. Prior to conversion, proposed condominium and cooperative conversions which are nonconforming shall be subject to the approval of a special exception in accordance with the provisions of Sect. 9-614.~~

- **Amend Part 5, Qualifying Use, Structure Regulations, by adding a new Sect. 2-518 to read as follows:**

2-518 Condominiums, Condominium and Cooperative Conversions

1. During the period of declarant control and as long as the declarant has the right to create additional units or to complete the common elements, and notwithstanding that the declarant is not the owner of the land, the declarant shall have the authority to execute, file, and process any site plan, parking tabulations, application for special permit, special exception, variance or rezoning, to include a development plan, conceptual development plan, final development plan, generalized development plan or proffered conditions, with respect to the common elements or a plan/application affecting more than one (1) unit. However, if such plan or application creates an affirmative obligation on the unit owners' association, then the consent of such association shall be required.

Once the declarant no longer has such authority, in accordance with subsection B of Sec. 55-79.80 of the Code of Virginia, and notwithstanding that the unit owners' association is not the owner of the land, the executive organ of the unit owners' association, if any, and if not, then a representative duly appointed by the unit owners' association, shall have the authority to execute, file and process any site plan, parking tabulation, application for special permit, special exception, variance or rezoning, to include a development plan, conceptual development plan, final development plan, generalized development plan or proffered condition, with respect to the common elements or a plan/application affecting more than one unit. However, if such plan or application creates an affirmative obligation on the declarant, then the consent of the declarant shall be required. Such plan or application shall not adversely affect the rights of the declarant to develop additional land.

A site plan, application for special permit, special exception, variance or rezoning, to include a development plan, conceptual development plan, final development plan, generalized development plan or proffered condition affecting only one (1) unit may be filed by the unit owner.

For purposes of obtaining Building, Residential and/or Non-Residential Use Permits and sign permits, the unit owner, including the declarant if the declarant is the unit owner, shall apply for permits for the unit, and the unit owners' association shall apply for permits for the common elements, except that the declarant shall apply for permits for convertible land. For the purposes of this Section, condominium, declarant, common elements, unit, unit owners' association and convertible land shall be as defined in the Code of Virginia, Title 55, Chapter 4.2, The Condominium Act.

Paragraphs 2 and 3 have been relocated from Sect. 2-409 and are unchanged except as noted below in bold.

2. Notwithstanding the specific minimum lot size requirements and minimum yard requirements specified for a given zoning district, a single family detached or attached dwelling condominium development may be permitted under the ~~Condominium Laws of Virginia~~ **Code of Virginia, Title 55, Chapter 4.2, The** Condominium Act, subject to the following provisions:

A. In single family attached dwelling development, the minimum lot size and minimum yard requirements of the zoning district in which located shall be met as if lot lines existed.

B. Single family detached dwelling developments shall be subject to the following requirements:

(1) The minimum lot size and minimum yard requirements of the zoning district in which located shall be met as if lot lines existed, and all dwelling units shall be subject to the same requirement to have access to a dedicated public street as single family dwelling units located on lots which result from a subdivision of land, except as provided for by the provisions of Part 3 of Article 11 and Chapter 101 of The Code, The Subdivision Ordinance.

C. The location of any community structure, such as a clubhouse or swimming pool, shall be governed by the minimum yard requirements presented for all other structures in the zoning district in which located.

D. Accessory structures shall be permitted in general accordance with the provisions of Part 1 of Article 10, as determined by the Zoning Administrator.

E. Such developments shall comply with the maximum density and other provisions of the zoning district in which located.

3. Any existing structure(s) and its related lot may be converted to a condominium or cooperative, provided the development conforms to the applicable Zoning Ordinance

provisions, **to include, if applicable, an approved site plan.** Prior to conversions, proposed condominium and cooperative conversions which are nonconforming shall be subject to the approval of a special exception in accordance with the provisions of Sect. 9-614.

Amend Article 8, Special Permits, Part 0, General Provisions, as follows:

- Amend Sect. 8-009, Application for a Special Permit, by revising Par. 1 to read as follows:

1. An application for a special permit may be made by any property owner, lessee, contract purchaser, official, department, board or bureau of any government or their agent, or condominium in accordance with the provisions of Sect. 2-518.

- Amend Sect. 8-011, Submission Requirements, by revising Par. 7 to read as follows:

7. A statement which confirms the ownership of the subject property, and the nature of the applicant's interest in same. If the applicant is not the owner of the property involved in the application, evidence must be submitted showing that the applicant will have the right to use the property as proposed. For a condominium, the provisions of Sect. 2-518 shall be applicable.

Amend Article 9, Special Exceptions, Part 0, General Provisions, as follows:

- Amend Sect. 9-009, Application for a Special Exception, by revising Par. 1 to read as follows:

1. An application for a special exception may be made by any property owner, owner of an easement, possessor of the right of entry under the power of eminent domain, lessee, contract purchaser, official, department, board or bureau of any government or their agent, or condominium in accordance with the provisions of Sect. 2-518.

- Amend Sect. 9-011, Submission Requirements, by revising Par. 8 to read as follows:

8. A statement which confirms the ownership of the subject property, and the nature of the applicant's interest in same. If the applicant is not the owner of the property involved in the application, evidence must be submitted showing that the applicant will have the right to use the property as proposed. For a condominium, the provisions of Sect. 2-518 shall be applicable.

Amend Article 17, Site Plans, Part 1, General Requirements, as follows:

- Amend Sect. 17-104, Uses Exempt from a Site Plan or a Minor Site Plan, by revising Par. 8 to read as follows:

Unless otherwise required by proffered conditions or development conditions of an approved rezoning, special permit, special exception or variance, the following uses shall not be subject to the requirement for a site plan or a minor site plan. Such uses, however, shall still be subject to all other applicable provisions of this Ordinance, the Public Facilities Manual and The Code.

8. Accessory service uses and changes in use to a use which has a greater parking requirement than the previous use shall require submission and approval of a parking tabulation to demonstrate that the number of existing parking spaces on site meets the minimum off-street parking requirements for all uses. Parking tabulations shall be submitted on forms provided by the Director, certified by an engineer or land surveyor authorized by the State to practice as such and shall include the written consent of the property owner. For condominiums, written consent shall be provided in accordance with the provisions of Sect. 2-518

- Amend Sect. 17-108, Site Plan Procedure, by revising Par. 1 to read as follows:

1. All site plans shall be submitted by the property owner, ~~or~~ by an agent of the property owner or by a condominium in accordance with the provisions of Sect. 2-518 to the Director on fifteen (15) clearly legible blue or black line copies, and each site plan shall be accompanied by a receipt evidencing the payment of all required fees for processing and approval as set forth in Sect. 109 below.

- Amend Sect. 17-112, Agreements and Security, to read as follows:

1. Except as provided below, prior to the issuance of a construction permit for clearing and grading or for the installation of the physical improvements and facilities shown on an approved site plan or minor site plan, there shall be executed by the owner or developer and submitted with the application for a construction permit an agreement to construct such physical improvements as are shown on such approved plan. Such agreement shall be accompanied by a fee in accordance with Sect. 109 above and a security package acceptable to the County in the amount of the estimated cost of those physical improvements which (a) are located within public rights-of-way or easements and the construction of which is not otherwise secured in its entirety with the Virginia Department of Transportation or (b) are for vehicular ingress and egress, for public access streets, for structures necessary to ensure stability of critical slopes and for storm water management facilities or (c) are required by a proffered condition in accordance with the provisions of Par. 8 of Sect. 18-204 or required to be bonded by a development condition of an approved special permit, special exception or variance in accordance with the provisions of Sections 8-007, 9-007 and 18-405, respectively. The submission of agreements and security packages for such plans for which

approvals are conditions of record plat approvals shall be required pursuant to Chapter 101 of The Code, The Subdivision Ordinance.

2. The aforesaid agreement and security package shall be provided for guaranteeing completion of all work covered thereby within the time to be approved by the Director, which time may be extended by the Board upon payment of the extension fee and written application by the owner or developer, signed by all parties, including the sureties, to the original agreement.
3. The adequacy, conditions and acceptability of any security package hereunder shall be determined by the Board or any official of the County as may be designated by resolution of the Board.
4. In any case where any such official has rejected an agreement or security package, the owner or developer shall have the right to appeal such determination to the Board, provided the owner or developer has paid to the County the required fee for the examination and approval of the site plan or minor site plan and inspection of all required improvements shown on such plans.
5. Periodic partial and final release of any security shall be in accordance with the provisions of Part 8 of Article 2 and the Public Facilities Manual.
6. For the purposes of this Section, an owner of a condominium shall include, a declarant, unit owners' association or unit owner, as provided for in Sect. 2-518.

Amend Article 18, Administration, Amendments, Violations and Penalties, as follows:

- Amend Part 2, Amendments, as follows:

- Amend Sect. 18-201, Initiation of Amendments, by revising Par. 3 to read as follows:

The text of this Ordinance and any zoning district boundary shown on the Zoning Map may be amended by the Board, provided that proceedings for any amendment shall be initiated only in the following manner:

3. By the filing with the Zoning Administrator of an application by the owners, contract purchasers, or a condominium in accordance with the provisions of Sect. 2-518, or their agents of the land proposed to be rezoned, which application shall be sworn to under oath or affirmation and acknowledged before a notary public.

- Amend Sect. 18-202, Submission Requirements, by revising Par. 7 to read as follows:

All applications for amendments to the Zoning Map, initiated in the manner prescribed by Par. 3 of Sect. 201 above, except as qualified below, shall be filed with the Zoning Administrator and shall include the following information:

7. An application filed by an agent, contract purchaser or lessee shall include a notarized written statement signed by the property owner indicating endorsement of the application. For a condominium, a notarized written statement by the property owner shall be provided in accordance with the provisions of Sect. 2-518.

- Amend Sect. 18-203, Generalized Development Plan Regulations, by revising Par. 4 to read as follows:

Generalized development plans as required by Par. 10 of Sect. 202 above shall be subject to the following regulations:

4. Any statement, plan, profile, elevation or other demonstrative material which is submitted with a rezoning application and which is to be a proffered condition shall be identified as such by a written statement to that effect signed by the applicant and the owner, to include contract purchaser. For a condominium, the written statement of proffered conditions shall be signed in accordance with the provisions of Sect. 2-518.

- Amend Part 4, Variances, as follows:

- Amend Sect. 18-401, Initiation, to read as follows:

A property owner, tenant, government official, department, board, ~~or~~ bureau or condominium, in accordance with the provisions of Sect. 2-518, may apply to the BZA for a variance of the strict application of the terms of this Ordinance; provided, however, application shall be made to the Board of Supervisors for a special exception pursuant to those provisions set forth in Part 6 of Article 9.

- Amend Sect. 18-403, Submission Requirements, by revising Par. 8 to read as follows:

8. If the applicant is not the owner of the property involved in the application, evidence must be submitted showing that the applicant will have the right to use the property as proposed. For a condominium, the provisions of Sect. 2-518 shall be applicable.

ATTACHMENT A

VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

CHAPTER 9

An Act to amend and reenact §§ 15.2-852, 15.2-2289, and 55-79.43 of the Code of Virginia, relating to the Virginia Condominium Act; authorization of condominium association to be applicants in land use matters; disclosure.

[H 128]

Approved February 23, 2006

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-852, 15.2-2289, and 55-79.43 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-852. Disclosures in land use proceedings.

A. Each individual member of the board of supervisors, the planning commission, and the board of zoning appeals in any proceeding before each such body involving an application for a special exception or variance or involving an application for amendment of a zoning ordinance, which does not constitute the adoption of a comprehensive zoning plan or ordinance applicable throughout the county, shall, prior to any hearing on the matter or at such hearing, make a full public disclosure of any business or financial relationship which such member has, or has had within the 12-month period prior to such hearing, (i) with the applicant in such case, or (ii) with the title owner, contract purchaser or lessee of the land that is the subject of the application, *except, in the case of a condominium, with the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium*, or (iii) if any of the foregoing is a trustee (other than a trustee under a corporate mortgage or deed of trust securing one or more issues of corporate mortgage bonds), with any trust beneficiary having an interest in such land, or (iv) with the agent, attorney or real estate broker of any of the foregoing. For the purpose of this subsection, "business or financial relationship" means any relationship (other than any ordinary customer or depositor relationship with a retail establishment, public utility or bank) such member, or any member of the member's immediate household, either directly or by way of a partnership in which any of them is a partner, employee, agent or attorney, or through a partner of any of them, or through a corporation in which any of them is an officer, director, employee, agent or attorney or holds 10 percent or more of the outstanding bonds or shares of stock of a particular class, has, or has had within the 12-month period prior to such hearing, with the applicant in the case, or with the title owner, contract purchaser or lessee of the subject land, *except, in the case of a condominium, with the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium*, or with any of the other persons above specified. For the purpose of this subsection "business or financial relationship" also means the receipt by the member, or by any person, firm, corporation or committee in his behalf from the applicant in the case or from the title owner, contract

purchaser or lessee of the subject land, *except, in the case of a condominium, with the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium*, or from any of the other persons above specified, during the 12-month period prior to the hearing in such case, of any gift or donation having a value of more than \$100, singularly or in the aggregate.

If at the time of the hearing in any such case such member has a business or financial interest with the applicant in the case or with the title owner, contract purchaser or lessee of the subject land *except, in the case of a condominium, with the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium*, or with any of the other persons above specified involving the relationship of employee-employer, agent-principal, or attorney-client, that member shall, prior to any hearing on the matter or at such hearing, make a full public disclosure of such relationship and shall be ineligible to vote or participate in any way in such case or in any hearing thereon.

B. In any case described in subsection A pending before the board of supervisors, planning commission or board of zoning appeals, the applicant in the case shall, prior to any hearing on the matter, file with the board or commission a statement in writing and under oath identifying by name and last known address each person, corporation, partnership or other association specified in the first paragraph of subsection A. The requirements of this section shall be applicable only with respect to those so identified.

C. Any person knowingly and willfully violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

§ 15.2-2289. Localities may provide by ordinance for disclosure of real parties in interest.

In addition to the powers granted by this chapter, localities may provide by ordinance that the local planning commission, governing body or zoning appeals board may require any applicant for a special exception, or a special use permit, amendment to the zoning ordinance or variance to make complete disclosure of the equitable ownership of the real estate to be affected including, in the case of corporate ownership, the name of stockholders, officers and directors and in any case the names and addresses of all of the real parties of interest. However, the requirement of listing names of stockholders, officers and directors shall not apply to a corporation whose stock is traded on a national or local stock exchange and having more than 500 shareholders. *In the case of a condominium, the requirement shall apply only to the title owner, contract purchaser, or lessee if they own 10% or more of the units in the condominium.*

§ 55-79.43. County and municipal ordinances; nonconforming conversion condominiums; applicability of Uniform Statewide Building Code; other regulations.

A. No zoning or other land use ordinance shall prohibit condominiums as such by reason of the form of ownership inherent therein. Neither shall any condominium be treated differently by any zoning or other land use ordinance which would permit a physically identical project or development under a different form of ownership. *Except as provided in subsection E, no local government may require further review or approval to record condominium instruments when a property has previously complied with subdivision, site plan, zoning, or other applicable land use regulations.*

B. Subdivision and site plan ordinances in any county, city or town in the Commonwealth shall apply to any condominium in the same manner as such ordinances would apply to a physically identical project or development under a different form of ownership; however, the declarant need not apply for or obtain subdivision approval to record condominium instruments if site plan approval for the land being submitted to the condominium has first been obtained.

C. During development of a condominium containing additional land or withdrawable land, phase lines created by the condominium instruments shall not be considered property lines for purposes of subdivision. If the condominium can no longer be expanded by the addition of additional land, then the owner of the land not part of the condominium shall subdivide such land prior to its conveyance, unless such land is subject to an approved site plan as provided in subsection B of this section, or prior to modification of such approved site plan. In the event of any conveyance of land within phase lines of the condominium, the condominium and any lot created by such conveyance shall be deemed to comply with the local subdivision ordinance, provided such land is subject to an approved site plan.

~~D. For purposes of the subdivision, site plan and zoning ordinances, once the declarant no longer has a right to create additional units or to complete the common elements, the unit owners' association and its authorized agents shall be the sole proper parties to apply for and sign applications, notwithstanding that the unit owners' association is not the owner of the land; however, During the period of declarant control and as long as the declarant has the right to create additional units or to complete the common elements, the declarant has the authority to execute, file, and process any subdivision, site plan, zoning, or other land use applications or disclosures, including conditional zoning proffers and agreements incidental thereto that do not create an affirmative obligation on the unit owners' association without its consent, with respect to the common elements or applications affecting more than one unit, notwithstanding that the declarant is not the owner of the land.~~

In accordance with subsection B of § 55-79.80, once the declarant no longer has such authority, the executive organ of the unit owners' association, if any, and if not, then a representative duly appointed by the unit owners' association, shall have the authority to execute, file, and process any subdivision, site plan, zoning, or other land use applications or disclosures, including conditional zoning proffers and agreements incidental thereto that do not create an affirmative obligation on the declarant without its consent, with respect to the common elements or applications affecting more than one unit, notwithstanding that the unit owners' association is not the owner of the land. Such applications shall not adversely affect the rights of the declarant to develop additional land. For purposes of obtaining building and occupancy permits, the unit owner (including the declarant if the declarant is the unit owner) shall apply for permits for the unit, and the unit owners' association shall apply for permits for the common elements, except that the declarant shall apply for permits for convertible land.

E. Counties, cities and towns may provide by ordinance that proposed conversion condominiums and the use thereof, which do not conform to the zoning, land use and site plan regulations of the respective county or city in which the property is located, shall secure a special use permit, a special exception, or variance, as the case may be, prior to such property becoming a conversion condominium. A request for such a special

use permit, special exception, or variance filed on or after July 1, 1982, shall be granted if the applicant can demonstrate to the reasonable satisfaction of the local authority that the nonconformities are not likely to be adversely affected by the proposed conversion. No action on any such request shall be unreasonably delayed. In the event of an approved conversion to condominium ownership, counties, cities, towns, sanitary districts, or other political subdivisions may impose such charges and fees as are lawfully imposed by such political subdivisions as a result of construction of new structures to the extent that such charges and fees, or portions of such charges and fees, imposed upon property subject to such conversions may be reasonably related to greater or additional services provided by the political subdivision as a result of the conversion.

F. Nothing in this section shall be construed to permit application of any provision of the Uniform Statewide Building Code (§ 36-97 et seq.) or any local ordinances regulating design and construction of roads, sewer and water lines, stormwater management facilities and other public infrastructure, to a condominium in a manner different from the manner in which such provision is applied to other buildings of similar physical form and nature of occupancy.